
(2014) 09 DEL CK 0018
In the Delhi High Court
Case No : W.P. (C) 6093/2013

Rakesh Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Citation : (2015) 63 PTC 84

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Mohan Vidhani, Rahul Vidhani and Purva Chugh, Advocate for the Appellant; Manish Mohan, CGSC and Puja Sarkar, Advocate for the Respondent;

Final Decision : Disposed off

Judgement

Vibhu Bakhru, J.

1. The petitioner has filed the present petition, inter alia, seeking a direction to the respondent to serve the certificate of registration of trade mark "GOLDLINE". The grievance of the petitioner is that it had not received the registration certificate for the aforementioned trade mark and has thus been prevented from seeking renewal thereof. Briefly stated the relevant facts are that the petitioner filed an application, bearing No. 700401, for registration of the trade mark "GOLDLINE" on 01.03.1996 in class 11 in respect of the specified goods "lighting, heating, cooling and steam generating appliances including bulbs". The said application was advertised in the trade marks journal No. mega 1 at page 58 on 25.08.2003. It is stated that thereafter, the petitioner received no information with respect to the said registration. On 24.06.2009, the petitioner sent a letter to respondent No. 2 stating that he had not received the registration certificate even though the website of respondent No. 2 mentioned the status of the trade mark application No. 700401 as "Registered" and requested respondent No. 2 to provide a copy of the same. The petitioner sent further letters to respondent No. 2, on 14.06.2010 and 25.07.2011, requesting for a copy of registration certificate.

2. The petitioner filed an application under the Right to Information Act, 2005 on 01.03.2013 and in response to the said application, the petitioner became aware that the certificate of registration No. 359077 dated 26.04.2005 was dispatched from the office of the Registrar, Trade Marks (bearing dispatch No. 38058).

3. On 17.06.2013, the petitioner again checked the status of the trade mark application No. 700401 on the website of the respondent No. 2 and the same was shown as "Removed" with the History/PR details stated as follows:

"Mark has been removed from the register as it has not been renewed on time in accordance with the trade mark act, 1999 and notified in the trade mark journal 1444."

4. It is the petitioner's case that it had never received the certificate of registration. The respondent contended that the petitioner had the knowledge of the trade mark in 2009 and yet did not take any expeditious step for renewal of the trade mark.

5. The controversy that needs to be addressed is whether the respondent can be directed to serve the registration certificate on the petitioner at this stage. The significance of granting this relief would be that the petitioner would have a right to apply for renewal of the registration of the trade mark, which has expired.

6. The respondent has filed a counter affidavit stating that all relevant records indicating service of the registration certificate on the petitioner are not available. The respondent has produced a photocopy of a page which is stated to be from the dispatch register. The said page only indicates the number of the trade mark and does not provide any other details as to the mode of dispatch, the address on which the certificate was dispatched or even the name of the addressee. The respondent has candidly stated that they have no other document to show that the registration certificate was ever dispatched to the petitioner.

7. In absence of the records and the relevant material, the respondent's claim that the registration certificate was dispatched to the petitioner at its address cannot be accepted and the grievance of the petitioner has to be considered on the assumption that the respondent had not dispatched and served the registration certificate on the petitioner. The learned counsel for the petitioner had relied upon an order of this Court, in *EXL Components Pvt. Ltd. v. Union of India* : W.P. (C) No. 1245/2010 decided on 04.04.2011, in support of its contention that in a case where the respondent is unable to substantiate dispatch of certificate of registration, a direction to the Trade marks Registry to deliver the registration certificate would follow. The learned counsel for the respondent on perusal of the said order dated 04.04.2011 fairly states that the said order would be applicable in the facts of this case also.

8. In this view, it is directed that the respondent deliver the certificate of registration No. 359077 dated 26.04.2005 to the petitioner within four weeks

from today.

9. In the event the petitioner submits an application for renewal of the trade mark within a period of one month thereafter, the same would be considered as having been filed within the time as prescribed under the Rules and would be, accordingly, considered by the Trade Marks Registry. The writ petition is disposed of with the aforesaid directions.